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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1186

ORVILLE E. DENNIS,

Petitioner,

—v.—

SIDNEY SPARKS and R.L. LYND
d/b/a SIDNEY SPARKS, TRUSTEE,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE, AND BRIEF *AMICI CURIAE*

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-v-

Sidney Sparks and R.L. Lynd
d/b/a Sidney Sparks, Trustee,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The American Civil Liberties Union respectfully moves, pursuant to Rule 42 of this Court's rules, for leave to file the within brief amici curiae. Counsel for the Respondents have consented to the filing of this brief.*/ Counsel for the Petitioner have refused consent.

The American Civil Liberties Union is a nationwide, non-partisan organization of two hundred thousand members, dedicated to defending the principles embodied in the

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*/ A copy of that letter is being filed with the Clerk.

Bill of Rights to the Constitution. The ACLU and its affiliates have a deep interest in preserving the vital role of 42 U.S.C. §1983 as a deterrent to officially sanctioned private lawlessness, and as a means of redress for constitutional wrongs. Accordingly, the ACLU has sought to maintain effective remedies for deprivations of civil rights under color of law.

ACLU attorneys represented petitioners in Pierson v. Ray, 386 U.S. 547 (1967), and Scheuer v. Rhodes, 416 U.S. 232 (1974). The ACLU also participated as amici in Stump v. Sparkman, 435 U.S. 349 (1978), and in other cases to support remedies for civil rights violations. The ACLU believes that all private persons who conspire with public officials should be held accountable to those whose civil rights they violate, and that the possibility of liability can ensure greater fidelity to constitutional guarantees.

Amici thus have a strong interest in the issues presented by this case, and more importantly, extensive experience with those issues. With the benefit of this experience, Amici will make arguments which will not, to our knowledge, be made by the parties. The brief submitted with this motion will argue

that this case presents only the threshhold issue of whether a claim under §1983 has been stated when a private person is alleged to have conspired with an absolutely immune state judge. Amici will suggest that a broader ruling concerning the extent to which state judges can be compelled to participate in §1983 litigation is not necessary in this case, and should await a more suitable occasion for consideration.

The brief also provides the Court with the legislative history of the Civil Rights Act of 1871, crucial for understanding the expectations the 42nd Congress had for what is now 42 U.S.C. §1983. Finally, Amici examine the various policies in favor of and against the extension of judicial immunity to private persons.

In order to present this analysis, Amici respectfully move for leave to file the within brief.

Respectfully submitted,

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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION Amici Curiae

Interest of Amici Curiae

The interest of Amici Curiae appears in the foregoing motion.

STATEMENT OF THE CASE

Amici adopt and rely on the facts as stated in the Fifth Circuit's opinions below. Sparks v. Duval County Ranch Co., Inc., 588 F.2d 124, rehearing en banc 604 F.2d 976 (5th Cir. 1979). Briefly stated the facts are as follows.

Respondents, owners of oil and gas wells, brought an action under 42 U.S.C. §1983 against certain private individuals, petitioner among them, alleging that they conspired with state judge Carrillo to deprive them of their property rights. It was alleged that Manges, one of the defendants, had given Carrillo several gifts and favors in exchange for the judge's agreement to rule in his favor in all cases in which Manges was interested.[1/] The conspiracy culminated in the judge's issuance of an injunction

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1/ In fact, Carrillo was subsequently removed from office by the Texas Supreme Court and is presently incarcerated in a federal penitentiary on income tax charges.

prohibiting the respondents from producing oil. Petitioner Dennis was alleged to have acted as surety on the injunction bond, in knowing furtherance of the conspiracy. The injunction, which lasted thirty-one months, was ultimately dissolved by the Texas Court of Civil Appeals.

The district court dismissed the complaint on the ground that judicial immunity barred suit against Carrillo and that therefore there were no claims under color of law alleged against the remaining private defendants.

SUMMARY OF ARGUMENT

An allegation of conspiracy between an absolutely immune state judge and private persons states a claim under §1983. The judge's immunity from liability has no bearing on whether there has been a deprivation of right under "color of law." A private person who has participated jointly with a judge in a conspiracy to deprive another of his legal rights, has acted "under color of law" for purposes

of §1983 subject matter jurisdiction. Adickes v. Kress & Co., 398 U.S. 144, 152 (1970). In fact, a §1983 suit against private defendants need not even join the state actor as a party.

Petitioner has no standing to assert the interests of immune judges. Yet all of the policy considerations that he raises to support his claim for derivative immunity concern the judiciary's interest in avoiding involvement in §1983 litigation. This Court should apply its general rule that a party may not claim standing to vindicate the rights of third parties. Barrows v. Jackson, 346 U.S. 249 (1953).

Even if it is assumed that petitioner has such standing, this case does not require a broad ruling on the extent to which judges can be compelled to participate in §1983 litigation. The only question presented here is whether a §1983 claim alleging a conspiracy with an absolutely immune state actor states a claim for which relief may be granted. Determination of appropriate judicial involve-

ment in §1983 litigation should await future fact situations that spell out more clearly the competing interests involved.

There are no policy considerations that override the Congressional purpose behind §1983 of providing redress for deprivation of constitutional rights. The 42nd Congress enacted §1983 during Reconstruction, a period when state court systems were unwilling to provide effective redress for violation of federal rights, and often cooperated with private individuals in perpetuating those wrongs. Under the circumstances, petitioner must bear the burden of showing that public policy requires immunity. Butz v. Economou, 438 U.S. 478 (1978). Clear legislative intent and the absence of such immunity at common law compel the conclusion that §1983 cannot accommodate derivative immunity for private persons. Imbler v. Pachtman, 424 U.S. 409, 421 (1976).

Current policy considerations in favor of such immunity are no more persuasive. The claim that the judiciary will be overwhelmed with §1983 litigation assumes that the courts possess no power to weed out those claims that are patently frivolous before ever reaching the discovery or trial stage. Butz v. Economou, supra, at 507. Furthermore, the arguments ignore the fact that judges have always been amenable to process in a variety of other contexts. O'Shea v. Littleton, 414 U.S. 488 (1974). Indeed, there are several remedies available to respondent under Texas law which might well require Judge Carrillo's participation in discovery and trial.

It would be unfair to free private persons from liability under §1983 solely because they may have succeeded in conspiring with an absolutely immune state official. The policies in favor of judicial immunity do not apply to them; they are not subject to the same pressures of office; and they are not answerable to higher courts. Butz

v. Economou, supra, at 512. There is simply no valid societal interest in granting private persons derivative judicial immunity.

ARGUMENT

I. A PRIVATE PERSON WHO CONSPIRES WITH A JUDGE TO DEPRIVE ANOTHER PERSON OF HIS CIVIL RIGHTS IS AMENABLE TO SUIT UNDER 42 U.S.C. §1983 NOTWITHSTANDING THE JUDGE'S ABSOLUTE IMMUNITY.

The question presented in this case is whether a private person, alleged to have conspired with a judge to deprive another person of his constitutional rights, is amenable to an action for damages under 42 U.S.C. §1983, or whether he derivatively enjoys the judge's absolute immunity from such suit. Where, as here, the judge is the only state agent alleged to have participated in the conspiracy, clothing the private person with absolute judicial immunity would require dismissal of the claim at the outset. Denying the private person immunity would allow a §1983 claim to survive a dis-

missal motion, but would not dispose of the question of the extent and nature of the judge's participation in the suit. Because petitioner, as a private person, has no standing to and cannot adequately represent the interests of the judiciary in avoiding such involvement in §1983 suits, Amici respectfully submit that the Court should hold in this case only that non-immune conspirators are presumptively subject to §1983 liability, leaving for another day questions regarding the circumstances, if any, under which immune persons can be required to participate in discovery or trial.

Two reasons are advanced to support dismissal of this case against the petitioner who, on the current record, must be presumed to have deprived respondents of their civil rights. First, asserting lack of subject-matter jurisdiction, petitioner points out that, as a private party, he is subject to suit under §1983 only where he has acted "under color" of law, and he claims that requirement cannot

be met where the state actor is immune. Second, assuming arguendo that all the jurisdictional requirements of §1983 are met, he claims that the policy arguments in favor of judicial immunity require a per se rule derivatively extending that immunity to private defendants only by virtue of their participation with the immune judge. We deal with each of these arguments in turn.

A. Suits Alleging Conspiracies Between Absolutely Immune State Judges and Private Persons State §1983 Claims For Which Relief May Be Granted.

Private persons acting in concert with state actors are ordinarily subject to suit under 42 U.S.C. §1983. To act "under color" of law requires only that the defendant be "a willful participant in joint activity with the state or its agents...." Adickes v. Kress & Co., 398 U.S. 144, 152 (1970), quoting United States v. Price, 383 U.S. 787, 794 (1966). The "under color of law" requirement is satisfied in such cases by participation of the

state actor in the events leading to the lawsuit, and does not require his presence in the lawsuit. Whether the state actor is actually named as a defendant is immaterial; the state actor's joint participation with the private defendants transforms the actions of all participants in the challenged activity into actions taken "under color of law," even though the state actor is not even named as a §1983 defendant. E.g., Adickes v. Kress, supra. 2/

Because the state actor's participation only in the challenged activity, not in the lawsuit, is sufficient for §1983 subject matter jurisdiction, the Court has held that§1983 creates a cause of action against private persons acting jointly with state actors even where the state actors may have a qualified immunity from §1983 liability. Adickes v. Kress, supra. Thus, it is settled that

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2/ The rule is the same under 18 U.S.C. §242, the criminal analogue to §1983, United States v. Price, supra.

a private person can be sued under §1983 even if the state actor is not named as a defendant, and even if, though named, the state actor would enjoy qualified immunity.

In the fact of this undisputed body of law, petitioner's argument that subject matter jurisdiction is lacking because the only state actor is absolutely immune is not persuasive. Whatever the policy arguments in favor of absolute immunity (we address those infra), they are irrelevant to the question of whether there has been a deprivation of rights "under color of law." 3/ As the Fifth Circuit noted

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3/ The intermixing of policy arguments and jurisdictional arguments for absolving private persons from §1983 liability was noted by the Seventh Circuit in Robinson v. Bergstrom, 579 F.2d 401, 414 (7th Cir. 1978):

> ...the requirement of "state action" in a section 1983 claim is an essential jurisdictional predicate. Accordingly, where state action is found lacking, the section 1983 complaint is properly dismissed for lack of subject matmatter jurisdiction. Alternatively a question of whether a defendant is immune...is not a jurisdictional issue. Rather, [it] is an affirmative defense....

See also Downs v. Sawtelle, 574 F.2d 1, (1st Cir. 1978).

below:

> the question is not at all whether the agent of the state who acts is subject to any particular sanction. Rather, it is whether he has exercised the power of the state in the premises.

Sparks v. Duval County Ranch Co., 604 F.2d 976, 982 (5th Cir. 1979).

If he has, whether or not he is sued, and whether or not policy arguments immunize him from liability, a §1983 action lies against individuals who have jointly acted with him in deprivation of other persons' civil rights - unless the policy arguments supporting judicial immunity extend to support a broader immunity for private co-conspirators.

B. Defendant Has No Standing To Assert, and This Court Should Not In This Case Consider, The Interests of Immune Judges.

Apart from the technical argument based on lack of subject matter jurisdiction, the defendant relies chiefly upon the policy arguments for judicial immunity examined by this Court in Pierson v. Ray, 386 U.S. 547 (1967) and Stump v. Sparkman, 435 U.S. 349 (1978) to absolve him from §1983 liability. He hardly disputes the facts pleaded in the complaint, and all of the arguments he advances concern the judiciary's asserted interest in avoiding not only liability but also any degree of involvement in §1983 litigation.

In these circumstances, the Court should apply its general rule that "[o]rdinarily, one may not claim standing in this court to vindicate" the rights of third parties. Barrows v. Jackson, 346 U.S. 249, 255 (1953). This rule is a sound prudential limitation, relieving the Court of unnecessary adjudication, and assuring that the third

parties themselves - usually the best proponents of their own rights - will be able to decide if and when those rights are to be vindicated. Singleton v. Wulff, 428 U.S. 106, 113 (1976). In Singleton, this Court enunciated two situations which might justify exceptions to the general rule: First, the relationship of the litigant and the third party must be so close that the rights of the two are inextricably bound up with each other; and second, there must be some obstacle to assertion of the right by the third party.4/

4/ Both were found present in Singleton, where physicians were allowed to assert their patients' constitutional rights to abortion, because of the unique and close nature of the physician-patient relationship in making the medical decision to abort, and the obstacles - including invasions of privacy and imminent mootness - to a woman bringing such a suit on her own.

Although only four Justices joined that part of Justice Blackmun's decision dealing with third party standing, the remaining Justices urged an even more restrictive view. See also United States v. Raines, 362 U.S. 17 (1960)(declining to permit Board of Registrars to assert rights of private parties).

Neither justification applies in this case. Petitioner has no special relationship to the judge whose "immunity" he wishes to assert (other than as a potential co-conspirator, which he denies) or to the judiciary as a whole. And judges are capable of protecting their own rights, if and when those rights are threatened, and if and when they choose to do so. See Supreme Court of Virginia v. Consumers Union of the United States, ___U.S.___, 48 U.S.L.W. 4620 (June 3, 1980). The "general rule" must be applied: petitioners should be limited to asserting their own rights, not those of the judiciary.

But even if the Court finds that defendant can assert the interests of immune judges, the long standing rule that the Court will not formulate a rule of law broader than necessary to decide a particular case should lead it to decline to consider the defendant's third-party arguments. Whatever arguments there may be against involving a judge

in ongoing §1983 litigation to which he is not a party plainly depend on the particular facts of each case and the particular participation at issue.

In many cases, such as this, it may be possible to prove the facts without any participation by the unnamed judge. In others, although some evidentiary participation may at first sight be indicated, it may be possible to devise procedures to satisfy both the interest of plaintiff in pursuing a civil case and the judicial interest, if there is one, in not being called to participate in any manner. Cf. In Re Attorney General of the United States, 596 F.2d 58 (2d Cir. 1979), cert. denied, ___U.S.___, 100 S. Ct. 217 (1979). It may be necessary to insist on heightened standards of necessity prior to requesting evidence from a judge in cases where such evidence is appropriate. Cf. United States v. Nixon, 418 U.S. 683 (1976). There may even be cases where, under standards to be developed, courts will

properly hold that necessary evidence cannot be secured consistent with the public interest, resulting in dismissal of those cases in the interest of justice. Cf. Roviaro v. United States, 353 U.S. 53 (1957). Each of those possibilities is, for now, abstract and hypothetical. Accordingly, we urge the Court simply to hold that defendant is not entitled to clothe himself with the non-party judge's immunity, and to remand this case for further proceedings.

II. THERE ARE NO POLICIES IN FAVOR OF GRANTING DERIVATIVE IMMUNITY TO PRIVATE PERSONS WHICH OVERRIDE THE CONGRESSIONAL POLICY OF PROVIDING REMEDIES FOR DEPRIVATION OF CONSTITUTIONAL RIGHTS.

Perhaps there is no principle more basic to our system of justice than that "...where there is a legal right, there is also a legal remedy by suit, or action of law, whenever that right is invaded." Marbury v. Madison, 1 Cranch 137,

163 (1803). This Court has repeatedly affirmed Marbury's declaration that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Davis v. Passman, 442 U.S. 228, 60 L.Ed. 2d 846, 861 (1979)(emphasis added). See also Butz v. Economou, 438 U.S. 478, 485 (1978); Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 397 (1971). The Court only recently pointed out the anomaly and difficulty under our jurisprudence, of leaving an injured litigant with "no remedy at all." Snepp v. United States, 62 L.Ed. 2d 704, 711(1980).

In light of these principles, the Court has required those who wish to invoke the doctrine of official immunity from liability for unconstitutional conduct to "bear the burden of showing that public policy requires an exemption." Butz v. Economou, supra, at 506. The defendant here must overcome two particularly strong policy arguments against extension of immunity.

Extension of the doctrine of official immunity to private persons would further weaken our commitment to a jurisprudence where legal wrongs are redressed by legal remedies. Moreover, private persons would not be deterred from joining with state actors to commit constitutional wrongs, another critical goal of §1983.

This Court has held that §1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." Monroe v. Pape, 365 U.S. 167, 172 (1961). A parallel concern has been that §1983 be read "in harmony with general principles of tort immunities and defenses rather than in derogation of them." Imbler v. Pachtman, 424 U.S. 409, 418 (1976), citing Tenney v. Brandhove, 341 U.S. 367 (1951). In determining whether immunity should be granted, a two-step analysis has been used: inquiry into the immunity accorded at common law followed by an examination of the relevant policy considerations. Imbler v. Pachtman,

supra, at 421. See also Butz v. Economou, supra; Pierson v. Ray, supra.

There is no history of common law immunity for private persons who conspire with judges to deprive citizens of legal rights. The language of the predecessor statute for §1983, Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, is clear and uncompromising. It applied to "any" person who under color of state law deprived "any" person of his federal constitutional or statutory rights. 5/

As commentators have noted, 6/ given the Reconstruction setting in which §1983 was

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5/ As altered by the reviser who prepared the Revised Statutes of 1878 and as printed in 42 U.S.C., the statute refers to "every" person who deprives "any" person of his rights. "Every" is just as conclusive as "any," and of course the reviser lacked authority to amend the law substantively. See Revised Statutes of the United States, 1878, Preface, p.4, Appendix, pp. 1092-93 Stat. 268, ch. 82, §4, as amended by 20 Stat. 27, ch. 26.

6/ See Note, Liability of Judicial Officers Under 42 U.S.C. §1983, 79 Yale L.J. 322, 325-28 (1969). See also Note, Developments in the Law: Section 1983 and Federalism, 90 Harv. L. Rev. 1133, 1154-56 (1977).

enacted, it is highly unlikely that the 42nd Congress meant to broaden the scope of any of the official immunities then existing. As Justice Douglas noted in his dissent in Pierson v. Ray, supra, at 559: "A condition of lawlessness existed in certain of the States under which people were being denied their civil rights." Congress was concerned that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress." 7/ The very situation presented here - the perversion of local systems of justice by private citizens acting in concert with judges - was repeatedly invoked by congressional proponents of the statute.8/

7/Cong. Globe, 42nd Cong., 1st Sess. (Congressman Lowe of Kansas, March 31, 1871, p. 374, col.3).

8/ See for example: Senator Sherman of Ohio (summing up conference report): "Spreading terror and violence...now exist unchecked by punishment, independent of law, uncontrolled by magistrates." (footnote cont'd next page)

It was, indeed, the breakdown of justice that gave rise to the need for legislation. See generally, Monroe v. Pape, supra, at 174-83, 235-36.[9/]

(footnote cont'd from previous page) Cong. Globe, 42nd Cong., 1st Sess., Apr. 19, 1871, p.820, col. 2.

Congressman Rainey of South Carolina: "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity." Id., Apr. 1, 1871, p. 394, col. 3.

Congressman Beatty of Ohio: "The remedy is needed because of 'prejudiced juries and bribed judges.'" Id., Apr. 3, 1871, p. 429, col. 2.

See also: Congressman Garfield of Ohio, Id., April 4, 1871 App. p. 153, col. 3; Senator Osborn of Florida, Id., April 13, 1871, p. 654, col. 2; Congressman Portor of Virginia, Id., April 4, 1871, App. p. 277.

See also the complaint of a Louisiana loyalist to Carl Schurz that "men who held commissions in the rebel army, who signed the ordinance of secession,...who took a leading part in the rebel movement" were acting as judges in the southern states. Quoted in Stampp, The Era of Reconstruction, 1865-1877 (Knopt 1965) at p. 76.

9/ "The purpose and scope of the [statute] must be viewed against the events and passions of the time." U.S. v. Price, supra, at 803.

The historical record could not be clearer. The obvious concerns behind Congress's enactment of what is now §1983 would be severely undermined by the granting of any new immunities or by broadening the scope of existing immunities.

Certainly policy considerations of fairness support retaining a §1983 remedy for all litigants whose civil rights have been abridged under color of law. The petitioner here, at least, does not and could not argue that his liability for his wrongs is unfair.

The burden of his argument, therefore, is that a rejection of derivative immunity would erode the foundations of judicial immunity. If a judge is made even indirectly answerable for his conduct, he will not be "free to act upon his own convictions without apprehension of personal consequence to himself." Bradley v. Fisher, 80 U.S. 335, 347 (1872). The prospect is raised of a judiciary overwhelmed by a flood tide of §1983 litigation. In such circumstances of embarassment and inconvenience, it is contended, fearless and independent decision mak-

ing will be impossible.

This argument is sheer speculation. There is no reason to suppose that frivolous §1983 claims cannot be disposed of at the pleading stage or on summary judgment. Butz v. Economou, supra, at 507; Slotnick v. Staviskey, 560 F.2d 31,33(1st Cir. 1977). The embarrassment that the pendency of §1983 proceedings might cause is no greater than the embarrassment that arises in any event from disclosure of the operative facts in the press, disclosure that is constitutionally protected, e.g., Landmark Communications, Inc. v. Commonwealth of Virginia, 435 U.S. 829 (1978). As for inconvenience, judges have always been amenable to process in a variety of other contexts. They can be punished criminally for willful deprivations of constitutional rights under 18 U.S.C. §242, O'Shea v. Littleton, 414 U.S. 488, 503 (1974); Cf. Gravel v. United States, 408 U.S. 606, 627 (1972), and they are amenable to suits seeking declaratory or injunctive relief. Cf. Marbury v. Madison, 1 Cranch 137 (1803).

Other high government officials are also required, under certain circumstances, to give evidence in criminal trials. United States v. Nixon, supra. In United States v. Fromme, 405 F. Supp. 578 (E.D. Cal. 1975), it was held that even a sitting President of the United States could be subpoenaed to testify in a criminal trial, but that in lieu of appearing in court, he would be allowed to give a deposition on video tape. The point is that in each case the court must balance the interests of the official in avoiding the burden of involvement in litigation with the interests in affording litigants fair trials.

The argument that embarrassment and inconvenience necessitate a broad, per se derivative immunity rings particularly hollow in this case, where the defendant has conceded that he is subject to civil suit for the same relief in state court. See Petitioner's Brief, p. 28. Proof of the elements of the state claim would require substantially the same evidence as would be necessary in the federal §1983 action, and would cause no less potential

inconvenience or embarrassment to Judge Carillo. Weighing the rights of litigants, and the interests of its judiciary, Texas has decided to permit suits for relief against individuals alleged to have bribed state judges, and not to immunize those individuals in the interests of "protecting" its judiciary. See Petitioners Brief, p. 28. There is no reason why federal law should restrike the balance that Texas believes best accommodates its interests. See 42 U.S.C. §1988; Sullivan v. Little Hunting Park, 396 U.S. 229, 240 (1969).

Two other arguments can be disposed of briefly. First, the contention that derivative immunity is necessary to prevent federal courts from acting as monitors of state court litigation is baseless. The immunity question only arises in damage suits, where "monitoring" is impossible. To the extent that petitioner complains of a federal action for deprivation of rights by state officials, and those acting in concert with them, his quarrel

is with the 42nd Congress. See Monroe v. Pape, supra, at 183.

Nor is it likely that private persons will be discouraged from going to state court without assurance of derivative immunity. They may be less likely to bribe state court judges - a happy result - but only an assumption that the requisite standards for §1983 liability will suddenly be loosened beyond all reason could be expected to deter individuals from seeking judicial relief. Even if accepted, that argument would tend to support only a qualified good-faith defense for private parties. But as the First Circuit has noted:

> private parties simply are not confronted with the pressures of office, the often split-second decision-making or the constant threat of liability facing police officers, governors and other public officials.

Downs v. Sawtelle, supra at 15. See also Sparkman v. McFarlin, 601 F.2d 261, 274 (7th Cir. 1979).

Finally, we note that the factors this Court has pointed to as softening the im-

pact of absolute judicial immunity do not apply to private parties. There is no appeal from a private party's violation of rights; private persons are not bound by precedent; they are not subject to the control of the legislature or the electorate. See Butz v. Economou, supra, at 512.

The considerations outlined above dictate that private defendants in §1983 actions should not presumptively enjoy derivative immunity from suit. Preserving §1983 relief against private persons acting jointly with immune judges will entail no undue involvement for judges in most cases, and any difficulties that might arise from evidentiary needs should not be extended to immunize private wrongdoers who cannot assert any valid social interest in freeing them from liability for the consequences of their misdeeds. It would be a strange rule of law that denied a judicial remedy to those injured by the private corruption of judges.

CONCLUSION

For the foregoing reasons the judgment below should be affirmed.

Respectfully submitted,

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